



**National Resource Center for
Permanency and Family Connections**
Silberman School of Social Work at Hunter College



*A Service of the Children's Bureau
& A Member of the T/TA Network*

INFORMATION PACKET

The Adoptions and Safe Families Act: Barrier to Reunification Between Children & Incarcerated Mothers

By Kristen S. Wallace

May 2012

**Edited by Lyn Ariyakulkan, MSW
NRCFPC Information Services Coordinator**

June 2012

**A Service of the Children's Bureau & A Member of the T/TA Network
2180 Third Avenue, 7th Floor
New York, NY 10035
Fax: 212-396-7640
www.nrcfpc.org**

SUMMARY

The Adoption and Safe Families Act (ASFA) of 1997 was passed to increase the placement of foster children in permanent homes. However, ASFA guidelines created to expedite permanency planning have become obstacles in the reunification of incarcerated mothers and their children.

Approximately 52% of incarcerated mothers reported being single parents, increasing the likelihood that their children will enter the child welfare system upon their arrest (Glaze & Maruschak, 2008). As of 2003, approximately 6% of children in foster care entered the system due to parental incarceration (Allard and Lu, 2006). When a child is placed in the system, child welfare workers are required under ASFA to perform “reasonable efforts” to reunite children with their parents. However, the average sentence of an incarcerated parent is 80 to 100 months, well beyond ASFA’s 15 month timeline for termination of parental rights (TPR) (Christian, 2009). The longer a mother’s sentence, the longer her child remains in the system and the less likely they are to be reunified. Studies show that children whose mothers were incarcerated for two or more years were less likely to be reunified with their mothers than children whose mothers were never incarcerated (Dworsky, Harden, & George, 2011).

Several structural barriers limit the ability of child welfare workers to perform reasonable reunification efforts within ASFA’s 15 month TPR timeline. For one, many workers are unfamiliar with prison regulations, resources, programming, and staff (Smith, 2000). Additionally, mothers’ correctional facilities are often located far from their children’s place of residence. Sixty-two percent of parents in state prisons and eighty-four percent of parents in federal prisons are imprisoned 100 miles away from their homes, while forty-three percent of parents in federal prisons are imprisoned 500 miles away from their homes (NRCCFI, 2009). Few agencies have the resources to transport children the long distances to their mothers’

correctional facilities. Of the national programs listed in the National Institute of Corrections 2005 report of assistance programs for incarcerated mothers, only 37% provided visitation assistance to at least one correctional facility (Laughlin, Arrigo, Blevins, & Coston, 2010).

There is a great need for further study into the correlation between maternal incarceration and foster care placement. Dworsky et al. (2011) identifies that there is a lack of information regarding “the number of foster children whose mother is incarcerated, the likelihood that foster care placement will precede rather than follow maternal incarceration, the effect of having an incarcerated mother on the number or type of placements children experience while they are in care, their length of stay, or their permanency outcomes (e.g. reunification versus adoption)”. Without knowing these key facts, child welfare agencies will continue to provide inadequate resources for children and their incarcerated mothers.

FACTS & STATISTICS

The Bureau of Justice Statistics gathered information about the number of prisoners with children under the age of 18 (Glaze & Maruschak, 2008). Some of the key findings included:

- Since 1991, the number of children with an incarcerated mother rose 131%
- 56% of female federal inmates reported being a parent and 36% of them reported having more than one child
- 53% of children reported by female inmates were between the ages 10 and 17
- 61% of incarcerated mothers reported living with their children prior to incarceration
- 77% of incarcerated mothers in state prison lived with children prior to incarceration
 - 52% were single mothers
- 11% of incarcerated mothers reported that their children were placed in a foster home or institution
- 65% of incarcerated mothers reported that their children were placed in kinship care with grandparents or other relatives
- 57.7% of incarcerated mothers reported never receiving personal visits from minor children
- 21.9% reported never having any type of contact at all

A 2005 case review conducted by the Child Welfare League of America highlights the increase in TPR cases between 1997 and 2002 (Lee, Genty, & Laver, 2005). Some of the key findings include:

- Parental rights were terminated in 92.9% of cases of maternal incarceration, in 91.4% of cases of paternal incarceration, and in 100% of cases when both parents were incarcerated
- In 94.4% of cases with custodial parents and 100% of cases with noncustodial parents, parental rights were terminated

POLICIES: THE ADOPTION AND SAFE FAMILIES ACT

The 1997 Adoption and Safe Families Act (ASFA)

Full text: <http://www.gpo.gov/fdsys/pkg/PLAW-105publ89/html/PLAW-105publ89.htm>

The aim of ASFA is to reduce the number of children in foster care and increase the number of children placed in permanent homes (Smith & Young, 2003). To expedite the placement of children in permanent homes, ASFA requires states to finalize a permanency plan for each child 12 months after they enter foster care as well as file a petition to terminate parental rights (TPR) once a child has been in foster care for 15 of the most recent 22 months. During the 15 month period, states are still required to make reasonable efforts toward reunifying children with their families. ASFA grants exemptions to the mandatory 15/22 TPR requirement if: 1) the child is in foster care with a relative, 2) there are compelling reasons why filing for TPR is not in the child's best interests, or 3) the state has failed to make reasonable efforts towards family reunification (Allard & Lu, 2006).

- Some states have amended ASFA guidelines to account for parental incarceration (Christian, 2009).
 - **New York** requires child welfare agencies to make diligent efforts to maintain contact between children and incarcerated parents. Diligent efforts include arranging child visitation to parent's correctional facility, as well as providing social services to address problems (e.g. substance abuse) that may negatively impact the parent-child relationship/future reunification.
 - **California** requires courts to order reasonable reunification services for an incarcerated parent and his/her child if it is in the child's best interest. Reunification

services can include telephone calls, transportation, and services extended to family members or foster parents.

- **Colorado** provides an exception to the 15 month TPR filing requirement if the child's length of time in care is due to circumstances beyond the control of the parent, including incarceration.
- At least six states, including Massachusetts, Nebraska, and New Mexico, have laws detailing that a parent's incarceration itself is not sufficient grounds for TPR (Nickel, Garland, & Kane, 2009; Christian, 2009).

POLICIES: THE FOSTERING CONNECTIONS ACT

Fostering Connections to Success and Increasing Adoptions Act of 2008

Full text: http://www.hunter.cuny.edu/socwork/nrcfcpp/info_services/Att%20B%20-%20HR%206893.pdf

Upon their mothers' arrest, the majority of children are placed in formal or informal kinship care. Studies show that children generally placed in kinship care are less likely to reunite with biological parents. However, it is unknown whether placement in kinship care affects the reunification of children with their incarcerated parents (Hayward & DePanfilis, 2007). What is known is that foster children placed in kinship care have better outcomes than those placed in foster homes.

Kinship caregivers of children of incarcerated mothers face many challenges. They tend to be older and poorer than non-relative caregivers and often face difficulty in arranging and financing prison visits and collect calls from incarcerated parents (Nickel, Garland, & Kane, 2009). One provision of the Fostering Connections to Success and Increasing Adoptions Act aims to increase permanency for children through relative guardianship and adoption by providing kinship caregivers with financial and social supports (Children's Defense Fund, 2008).

Benefits under the Fostering Connections to Success and Increasing Adoptions Act include:

- With Relatives: Notices to relatives when children enter care, kinship navigator programs, subsidized guardianship payments for relatives, and licensing standards for relatives
- With Adoptive Families: Incentives for adoption and adoption assistance
- With Birth Families and Other Relatives: New family connection grants

(Children's Defense Fund, 2008)

BEST PRACTICES

The New York State Citizens' Coalition for Children (NYCCC) website offers best practice tips for professionals working with children of incarcerated parents to foster healthy reunification between parent and child, as well as prevent against child entry into the criminal justice system (Chaffkin & Krupat, 2009). Their recommendations include:

- Communicate with the child's parent immediately and start to discuss the child's need for contact, information about their proceedings in the child welfare system, and permanency planning. Contact with the incarcerated parent is especially important because they can be a great source of important information regarding the child's health, background, and family.
- Arrange for contact between the child and parent as soon as possible (and when in the child's best interest). Ensure that contact between child and parent, whether it is in the form of visits, phone calls, or letters, is regular and consistent.
- Discuss the Adoption and Safe Families Act (ASFA) with parents so they understand the time-frames within which you have to work together. If reunification is possible and in the child's best interest, you can comply with ASFA by documenting a "compelling reason" filing for termination of the parent's rights is not in the child's best interest.
- If the parent is not a possible discharge resource, still involve them in planning for their children's future, including discussing custody and other permanency options for their children. Ask them to help you identify potential family resources that can provide a family for their children as well as support their ongoing relationship with their children.

REPORTS

The 2009 report, “Children of Incarcerated Parents: An Action Plan for Federal Policymakers,” by the Council of State Governments Justice Center provides promising practices, model programs, and recommendations for policymakers and child welfare workers. The report addresses parent-child interactions within correctional systems, support for kinship caregivers of children whose parents are incarcerated, and foster care and permanence, among other issues. A downloadable copy of the full report is available at:

http://www.reentrypolicy.org/jc_publications/federal_action_plan

The 2007 report, “Support Kinship Care: Promising Practices and Lessons Learned,” by Casey Family Programs provides child welfare practitioners with effective ways to provide support and services to kinship caregivers of children in foster care. A downloadable copy of the full report is available at:

http://www.casey.org/resources/publications/BreakthroughSeries_Kinship.htm

ONLINE RESOURCES

The National Resource Center for Permanency and Family Connections (NRCPFC), a service of the Children's Bureau, provides training and technical assistance to States, Territories and Tribes to build capacity and achieve child welfare systems change resulting in greater safety, permanency and well-being for children, youth and families. NRCPFC maintains a webpage on Children of Incarcerated Parents, as well as webpages on ASFA and the Fostering Connections Act. www.nrcpfc.org

The National Resource Center on Children and Families of the Incarcerated (NRCCFI) at Family & Corrections Network (FCN) is a national organization that gathers and disseminates up-to-date information about incarcerated families, advocates for criminal justice policy that promotes family values, trains professionals working with criminal justice involved families, and aims to give families a forum to advocate for their needs. <http://fcnetwork.org/>

NRCCFI provides a comprehensive directory of state, national, and international programs that serve families of the incarcerated. <http://fcnetwork.org/resources/directory>

The Annie E. Casey Foundation performs research on numerous child welfare issues, including children with incarcerated parents. Their report “When a Parent is Incarcerated: A Primer for Social Workers” outlines basic facts and information about the criminal justice system that social workers working with children of incarcerated parents should know – including how to work with families around issues of immigration and domestic violence. <http://www.aecf.org/>

References

Allard, P. E., & Lu, L. D. (2006). *Rebuilding families, reclaiming lives*. New York: Brennan Center for Justice at NYU School of Law.

Chafkin, B., & Krupat, T. (2009). *Working with children of incarcerated parents*. Retrieved May 9, 2012, from <http://nysccc.org/conference/conference-archives/2007-conference/importanceof-work/>

Children's Defense Fund. (2008). *Fostering Connections to Success and Increasing Adoptions Act*. Retrieved May 9, 2012, from <http://www.childrensdefense.org/policy-priorities/child-welfare/fostering-connections/>

Christian, S. (2009). *Children of incarcerated parents*. Washington D.C.: National Conference of State Legislatures. Retrieved from <http://www.f2f.ca.gov/res/pdf/ChildrenOfIncarceratedParents2.pdf>

Dworsky, A., Harden, A., & George, R. (2011). The relationship between maternal incarceration and foster care placement. *The Open Family Studies Journal*, 4, 117-121.

Glaze, L. E., & Marushack, L. M. (2008). *Parents in prison and their minor children*. Bureau of Justice Statistics.

Hayward, R. A., & DePanfilis, D. (2007). Foster children with an incarcerated parent: Predictors of reunification. *Children & Youth Services Review*, 29(10), 1320-1334.
doi:10.1016/j.childyouth.2007.05.005

Jefferson Smith, C., & Young, D. S. (2003). The multiple impacts of TANF, ASFA, and mandatory drug sentencing for families affected by maternal incarceration. *Children & Youth Services Review*, 25(7), 535. doi:10.1016/S0190-7409(03)00043-4

Laughlin, J. S., Arrigo, B. A., Blevins, K. R., & Coston, C. T. M. (2008). Incarcerated mothers and child visitation: A law, social science, and policy perspective. *Criminal Justice Policy Review*, 19(2), 215-238.

Lee, A. F., Genty, P. M., & Laver, M. (2005). *The impact of the Adoption and Safe Families Act on children of incarcerated families*. Washington D.C.: Child Welfare League of America.

Nickel, J., Garland, C., & Kane, L. (2009). *Children of incarcerated parents: An action plan for federal policymakers*. New York: Council of State Governments Justice Center.

Yali, L., & Borelli, K. (2011). *When a parent is incarcerated: A primer for social workers*. Baltimore, MD: The Annie E. Casey Foundation.